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CITATIONS

613992—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 500

SEWELL HATS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (S. R. 116–118)[1] is reported in 143 F. (2d) 450. The findings of fact, conclusions of law, and order of the National

[1] The appendices filed by the Board and the company in the court below are referred to as "B. A." and "P. A.," respectively. The supplemental proceedings in the court below have been bound into the company's appendix (pp. 116–122) and are referred to as "S. R." The printed "Transcript of Record" filed in the court below is referred to as "R." These documents have been lodged with the clerk of this Court.

Labor Relations Board (R. 102–108, 55–80) are reported in 54 N. L. R. B. 278.

JURISDICTION

The decree of the court below (S. R. 119–120) was entered on August 7, 1944. The petition for a writ of certiorari was filed on September 25, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's findings that petitioner interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act, and its findings that petitioner discouraged membership in a labor organization by discriminatorily discharging two of its employees, and laying off another employee, thereby violating Section 8 (1) and (3) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix, *infra*, p. 15.

STATEMENT

Upon the usual proceedings, the Board, on January 5, 1944, issued its findings of fact, conclusions of law, and order (R. 55–78, 102–108).

The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows: [2]

In February 1943, a group of petitioner's employees requested Mrs. R. A. Sewell, president and general manager of petitioner (R. 58; P. A. 2-3), which maintained its principal office and place of business at Red Oaks, Georgia (R. 58; B. A. 61), to grant them wage increases (R. 58–59; B. A. 17–18, 34, 42, 79–80, 117–118). Mrs. Sewell put the group off with the statement that wages had been frozen, but that she would confer with her auditor concerning the matter (R. 59; B. A. 18, 42). Dissatisfied with Mrs. Sewell's response to their request, the group decided to form a union (R. 59; B. A. 18, 43, 80, 93–94).

Petitioner soon became aware of the efforts of its employees to organize (R. 59, 62; B. A. 69–70, P. A. 5, 114, 116, 157–158). Immediately upon learning of these activities, Mrs. Sewell called a meeting of petitioner's entire supervisory staff (R. 59, 62; B. A. 72, 120–121, P. A. 5, 116–117, 345–347), and also summoned employee Gertrude Kimbrough to the meeting (R. 59, 62; B. A. 72, P. A. 5, 116–117). When Foreman William Beck arrived at the meeting, Mrs. Sewell asked him, "What is wrong in the finishing room?"

[2] In the following statement, the references preceding the semicolons are to the Board's findings, and the succeeding references are to the supporting evidence.

Beck replied, "Nothing that I know of," whereupon Mrs. Sewell commented that she had heard that the girls were forming a union. (R. 62–63; B. A. 120, 145, 170.) Mrs. Sewell then attempted to obtain more information about the union movement in the plant from employee Kimbrough, and to ascertain from her the identity of the leaders (R. 59, 63; B. A. 72–73, 77, P. A. 5–6).

On May 6, Mrs. Willie Dodson arranged with Charles H. Gillman, a representative of the Union,[3] to meet with the employees during their lunch hour on May 7 (R. 59–60; B. A. 19–20, 81). Mrs. Dodson, Mrs. Lovena Johnson, and Mrs. Julia Scarbrough, all employees in petitioner's finishing room (B. A. 16, 79, 2), on the morning of May 7, invited their fellow employees to meet with Gillman at noon that day (R. 60; B. A. 20, P. A. 602–603). Gillman conferred with the employees during their lunch hour on May 7 (R. 60; B. A. 5–7, 20–21, 33–34, 44, 81). At that time, it was decided to have a meeting at Mrs. Johnson's house on Sunday, May 9 (R. 60; B. A. 6, 21, 81).

On May 9, the union meeting was held at Mrs. Johnson's house (R. 61; B. A. 7, 23, 45, 83, 100), and arrangements were made to call on the employees who had not attended the meeting, to solicit their joining the Union (R. 61; B. A. 8, 23,

[3] The Congress of Industrial Organizations (B. A. 19).

83, 100). The following day, May 10,[4] a group of employees, including Mrs. Johnson, Mrs. Dodson, and Boykin Barnett, called at the homes of a number of employees, including almost all petitioner's colored employees (R. 61; B. A. 8, 23–24, 83, 95, 100). Barnett, a colored employee, was taken with the group to point out the homes of other colored employees (R. 61; B. A. 8, 24, 83, 100). That afternoon the group encountered Mrs. Pattillo, Mrs. Sewell's assistant, driving in the colored section of the district (R. 64; B. A. 8–9, 24, 36, 49, 76).

Early the next morning, May 11, Mrs. Pattillo called at the home of Mrs. Kelly Glass, Barnett's mother-in-law (R. 64, 67; B. A. 101, 113). She cautioned Mrs. Glass to tell her two sons, who worked at the plant, not to join the Union (R. 64, 67; B. A. 101). Mrs. Pattillo asked Barnett, who was present during the conversation, if he had joined the Union. Barnett said he had not, whereupon Mrs. Pattillo asked him "Who were the ladies that you were riding around with [yesterday] * * * was it Mrs. Scarbrough in there." (R. 67; B. A. 101, 102.) When he replied in the affirmative, Mrs. Pattillo ominously inquired if he knew that Mrs. Scarbrough had been discharged on the preceding Friday (R. 67;

[4] The finishing room was closed down from May 10 until May 17, 1943 (R. 60; B. A. 25, 45–46, 122, P. A. 130–131, 531–532).

B. A. 102). She later admonished him, "Boykin, don't you join that Union" because "the Union would make Mrs. Sewell awful mad" (R. 67; B. A. 102).

On June 2, the Board held a hearing in a representation proceeding initiated upon the Union's petition requesting the Board to investigate and certify the statutory bargaining representative of petitioner's employees (R. 61; B. A. 25–26, 85). As part of the proceedings, the Board, on June 28, directed an election to be conducted at petitioner's plant (50 N. L. R. B. 883). Subsequent to the issuance of the Direction of Election, Leon Cosper, foreman of the box department, warned one of his subordinates that "if [he] wanted a job there [he] would have to vote against the Union" (R. 65; B. A. 60, 57).

The Board found that petitioner, by the foregoing statements and activities, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7, thereby violating Section 8 (1) of the Act (R. 62–65, 66).[5]

The Board found further (R. 69, 76, 77–78, 104–105) that petitioner violated Section 8 (3)

[5] That petitioner's opposition to the Union was effective in discouraging membership in the Union is evident from the fact that employee Solley refused to attend a union meeting at Mrs. Johnson's home saying, "I was for you [girls], but now I am against you * * * because Mrs. Sewell said that anybody that joined the Union would be without work" (R. 63; B. A. 87–88).

and (1), in that it discriminatorily discharged Boykin Barnett and Willie Dodson, and laid off Lovena Johnson, because of their union membership and activity.

Boykin Barnett was employed at petitioner's plant for approximately a year and a half, substantially all of which time he worked as a hat blocker under Foreman Beck in the finishing room (R. 66–67; B. A. 99, 141). He joined the Union on May 7, obtained cards for use in signing up other employees, and thereafter actively solicited the colored employees to join the Union (R. 67; B. A. 107–108). He attended the union meeting at Mrs. Johnson's house on May 9, and accompanied Mrs. Dodson, Mrs. Johnson, and the others when they called on petitioner's colored employees on May 10 to invite them to join the Union (R. 61, 64, 67; B. A. 8, 24, 83, 100). As noted above (p. 5), Barnett's activities on this latter occasion were observed by Mrs. Pattillo, Mrs. Sewell's assistant.

On May 11, while the finishing room was closed down, Barnett injured his hand and was unable to work when the finishing room resumed operations on May 17 (R. 68; B. A. 102, 103). On May 18, he reported his injury to Mrs. Pattillo. She told him to report back when he was able to work. (R. 68; B. A. 103, 109–111, P. A. 131–132.) Several days later he spoke to Mrs. Sewell, who told him to "come back when your hand gets

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better, and you can go to work" (R. 68; B. A. 103–104, 112–113). On May 26, when Barnett attempted to return to work, he was abruptly informed that there was no work for him; that his place had been filled (R. 68–69; B. A. 104, 127-128, 179).

Petitioner contends (Pet. 28–29) that Barnett was discharged because his injury incapacitated him from performing his duties. The Board's rejection of this contention (R. 69) was sustained by the court below (S. R. 117–118). Aside from the fact that Mrs. Pattillo and Mrs. Sewell told Barnett he could return to work when he recovered from his injury, the Board's finding is further supported by the fact that petitioner had never discharged any other employee who was absent because of sickness or injury (R. 69; B. A. 146, P. A. 77–78). Moreover, it is undisputed that on May 11, immediately after petitioner learned of Barnett's union activities, and before he was injured, Mrs. Sewell advised Foreman Beck that she was going to discharge Barnett. Beck protested stating, "We need Barnett bad; these other blockers can't get [out] the hats we need." (R. 68; B. A. 127, 178.) [6]

Mrs. Willie Dodson worked for petitioner for over seven years. During the last two and one-

[6] After Barnett was replaced, two men were required to keep production at the level Barnett had maintained by himself (R. 67; B. A. 128, 148).

half years, she operated a finishing department machine which sewed the sweat bands on wool hats (R. 69–70; B. A. 13, 31, 125). Mrs. Dodson was among the group of employees who decided to form a union in February 1943, after Mrs. Sewell rejected the request for a wage increase (R. 58–59; B. A. 43, 80). It was at Mrs. Dodson's request that the union representatives met with the employees at the plant on May 7 (R. 59–60; B. A. 5, 19, 81). She signed a union membership application on May 7, and actively solicited other employees to join the Union (R. 76; B. A. 23, 62, 69, 150–151, 154, P. A. 256, 295, 784). She was in the group of employees observed by Mrs. Pattillo making the rounds of the homes of petitioner's employees for the purpose of enlisting them in the Union (R. 61, 64; B. A. 8, 23–24). On June 2, Mrs. Dodson testified on behalf of the Union at the representation hearing (R. 61, 76; B. A. 25–26).

On June 3, Mrs. Dodson's machine broke down (R. 71; B. A. 26–27). The next day two mechanics worked on the machine, but were unable to repair it (R. 71; B. A. 27–28, 171). The mechanics told Mrs. Sewell that the only man who could fix the machine was out of town, but was expected back over the week-end and would probably come to the plant on Monday, May 7 (R. 71; B. A. 28). Mrs. Sewell then advised Mrs.

Dodson to go home and await further instructions (R. 72; B. A. 28–29, 47–48, 52 cf. 173, 175–176).[7]

Not having been notified to return to work by 9 a. m. Monday, June 7, Mrs. Dodson went to Atlanta (R. 72; B. A. 28, 39). When she reported for work at the usual time the next morning she was discharged, notwithstanding her protest that she understood that she was not to come back to work until notified (R. 74; B. A. 29–30, P. A. 20, 92). The reason given for her discharge was that she was "off without permission" (R. 74; B. A. 30).

Petitioner has no rule penalizing unexcused absences, and ordinarily was very lax in enforcing attendance at work (R. 74–75; B. A. 30–31, 64–65, 125–126, P. A. 348). Prior to Mrs. Dodson's discharge, no employee had ever been disciplined in any way, let alone discharged, for unexcused absences, although many employees had been absent without permission (R. 75; B. A. 30, 50–51, 64–65, 90, 125–126, 134, 145–146). Thus, even had Mrs. Dodson deliberately stayed away from work and failed to report the reason for her absence, such an offense, under the prevailing plant rules and customs, would not have resulted in her discharge.

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[7] The testimony concerning Mrs. Sewell's instructions is conflicting. Mrs. Sewell testified that she directed Mrs. Dodson to report for work on the following Monday (P. A. 92). The Board found (R. 73) that Mrs. Dodson understood that she was not to report for work until notified by Mrs. Sewell to do so.

Mrs. Lovena Johnson was first employed by petitioner in 1941, and was assigned to sewing sweat bands on wool hats. Thereafter she was trained in various other operations connected with the finishing of wool hats. (R. 76; B. A. 48, 78, 96–98, 117, 125, 152–153, 155, P. A. 367–374, 390–391, 485–486.) She continued to work on wool hats until the regular straw hat operator resigned in November 1942, at which time Mrs. Johnson was transferred to straw hat operations (R. 76; B. A. 90, 91, 131). When no work was available on this job,[8] she worked on wool hats (R. 76; B. A. 85, 131, 149, 151, 152–153), and when production demands exceeded Mrs. Dodson's capacity to sew sweat bands on wool hats, Mrs. Johnson customarily assisted in that operation (R. 76–77; B. A. 85, 92, 131). It was petitioner's custom to transfer employees from one operation to another (B. A. 85–86, 123–124, P. A. 54–56), and Mrs. Johnson's predecessor on the straw hat operations was ordinarily assigned to wool operations at the close of the straw hat season (B. A. 90, P. A. 422).

Mrs. Johnson was spokesman for the group of employees who requested wage increases of Mrs. Sewell in February 1943 (R. 59, 77; B. A. 17–18,

[8] The volume of straw hats manufactured was comparatively small, and work on them was only carried on from approximately November to June, while wool hat production was continuous throughout the year (R. 76; B. A. 131–132, P. A. 314–315).

34, 42, 118), and participated in the subsequent decision of the group to form a union (R. 59; B. A. 18, 43, 80). She signed a union membership application on May 7, and, as above noted (p. 4), the first organizational meeting of the Union was held at her home (R. 61; B. A. 7, 23, 45, 81–82, 83, 100). She accompanied the group when they called on the employees to ask them to join the Union on May 10, 1943 (R. 61, 64; B. A. 8, 23–24, 83). She was diligent in activities on behalf of the Union (R. 77; B. A. 62, 99, 150–151, P. A. 256, 295, 602, 606), and was a witness for the Union at the representation case before the Board (R. 61, 77; B. A. 85, 122–123, 168, P. A. 195–196, 208–209).

On June 11, 1943, Mrs. Johnson was laid off by Mrs. Sewell, allegedly because there was no work for her to do (R. 77; B. A. 86–87). The Board found (R. 77), however, that the record did not sustain petitioner's contention. While work on straw hats had more or less come to a standstill at the time of her lay-off, there had been no slackening in the work which Mrs. Johnson customarily performed on wool hats along with her straw hat work. Only 3 days before Mrs. Johnson was laid off, Mrs. Sewell started training employee Elza Harris to operate the sweat-band sewing machine (R. 77; P. A. 288–289, 294–295), work which Mrs. Johnson did when there was not sufficient volume of straw hat work (R. 76–77; B. A. 85, 92, 131).

The volume of sweat-band sewing at the time of Mrs. Johnson's lay-off was such that it was necessary for Mrs. Harris and another trainee on the sweat-band machine, Mrs. Thomas, to work overtime to turn the work out (R. 104; B. A. 87, 149, P. A. 289–295, 479–483).[9] Other employees in the finishing room also worked overtime in June, July, and August 1943 (R. 104; B. A. 155–157, P. A. 479–483, 486–491). As a matter of fact, petitioner was experiencing a shortage of labor about this time (B. A. 135–136, 146, 162). Shortly after Mrs. Johnson's lay-off, petitioner hired a new and inexperienced employee to work regularly in the finishing department (R. 77; B. A. 89, P. A. 97). She was assigned to sewing welts and sweat bands in wool hats, both of which operations Mrs. Johnson had formerly performed (R. 76–77; B. A. 85, 89–90, 131).

The Board found that petitioner discouraged membership in the Union by its discriminatory discharge of Barnett and Mrs. Dodson, and its lay-off of Mrs. Johnson, thereby violating Section 8 (3) and (1) of the Act (R. 77–78, 104–105). The Board's order directed petitioner to cease and desist from the unfair labor practices found, to offer reinstatement with back pay to Barnett, Mrs. Dodson, and Mrs. Johnson, and to post appropriate notices (R. 106–107).

[9] Significantly, neither Mrs. Harris nor Mrs. Thomas was a member of the Union (B. A. 48, 158, P. A. 256).

Thereafter, petitioner filed a petition for review in the court below (R. 1–25), and the Board answered requesting enforcement (R. 27–31). On July 6, 1944, the court handed down its opinion (S. R. 116–118), and on August 7, 1944, entered its decree (S. R. 119–120), enforcing the Board's order in full.

ARGUMENT

Petitioner's contention (Pet. 28, 32, 34–35) that the Board's findings of unfair labor practices are not supported by substantial evidence presents no question of general importance. In any event, the evidence summarized in the statement (*supra*, pp. 3–13) affords full support for the challenged findings.

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents no conflict of decisions nor any question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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